

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. CR 1:18-03495-001 JCH
)	
vs.)	
)	
DOUGLAS D. SMITH,)	
)	
Defendant.)	

**Mr. Smith's response to the government's motion
to permit evidence, impeachment, and argument regarding Mr. Smith's
alleged failure to claim self-defense or defense of others (Doc. 74)**

Mr. Douglas Smith, by and through undersigned counsel, Assistant
Federal Public Defenders Aric G. Elsenheimer and Amanda R. Lavin,
submits this response to the government's motion in limine to permit
argument, impeachment, and evidence regarding Mr. Smith's alleged
failure to claim self-defense or defense of others at the crime scene. The
government's motion should be denied.

The government seeks a pretrial ruling regarding the admission of evidence, argument, and impeachment based on Mr. Smith's alleged failure to raise the claim of self-defense at the crime scene in his initial, very brief interview with Officer Rael. As an initial matter, the government's motion seeks an advisory ruling regarding matters that are not before the Court. This issue is not yet ripe and Mr. Smith is under no obligation to provide the government an indication of how his defense and testimony (assuming he testifies) will unfold. Certainly, the government has the right to impeach a defendant with a range of impeachment material. However, trial in this matter has not commenced and the government's request is premature and seeks from the Court an impermissible advisory ruling on evidentiary issues that are not yet ripe. "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Los Alamos Study Group v. U.S. Dep't of Energy*, 692 F.3d 1057, 1065 (10th Cir. 2012). Because the issues raised in the government's motion in limine are not ripe, the Court should deny them

without prejudice and permit the government to raise the issues at trial if they do become ripe.

Respectfully Submitted,

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